



महाराष्ट्र शासन राजपत्र

असाधारण भाग चार-क

वर्ष ४, अंक १]

गुरुवार, जानेवारी ४, २०१८/पौष १४, शके १९३९

[पृष्ठे २१, किंमत : रुपये ९.००

असाधारण क्रमांक १

प्राधिकृत प्रकाशन

महाराष्ट्र शासनाव्यतिरिक्त इतर वैधानिक प्राधिकाऱ्यांनी तयार केलेले
(भाग एक, एक-अ व एक-ल यांमध्ये प्रसिद्ध केलेले वैधानिक नियम व आदेश यांव्यतिरिक्त इतर)
वैधानिक नियम व आदेश ; यात भारत सरकार, उच्च न्यायालय, पोलीस आयुक्त, आयुक्त (राज्य उत्पादन शुल्क),
जिल्हादंडाधिकारी व निवडणूक आयोग, निवडणूक न्यायाधिकरण, निवडणूक निर्णय अधिकारी व निवडणूक आयोगाखालील
इतर प्राधिकारी यांनी तयार केलेले वैधानिक नियम व आदेश यांचा समावेश होतो.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road,

New Delhi 110 001, dated the 7th December, 2017
16 Agrahayana, 1939 (Saka).

NOTIFICATION

No. 82/MT-LA/27/2014.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission of India hereby publishes the judgement/order dated 9th December 2016 of the High Court of Judicature at Bombay in Election Petition No. 27 of 2014.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL, CIVIL JURISDICTION

APPLICATION No. 17 OF 2015

IN

ELECTION PETITION No. 27 OF 2014

Mr. Subhash Jaising Borkar

. . . Petitioner

Versus

(1) Gautam Sukhdev Chabukswar

. . . Applicant
(Org. Respondent No. 1)(2) Returning Officer,
Pimpri Constituency Assembly

(3) State of Maharashtra

. . Respondents

Mr. Hardik Vyas for the petitioner

Mr. P. N. Patil for the applicant/respondent No. 1

Mr. U. S. Upadhyay, A.G.P. for the respondent Nos. 2 and 3

CORAM : K. K. TATED, J.

DATED DECEMBER 9, 2016

P.C. :

1. Heard the learned counsel for the parties.

2. By this application, applicant original respondent No. 1 returned candidate in Election of Legislative Assembly which was held on 15th October 2014 from Pimpri Constituency of Maharashtra State as candidate from Shiv Sena, seeks summarily dismissal of Election Petition filed by petitioner under Article 226 of the Constitution of India and Representation of People Act, 1951.

3. In the present proceeding, petitioner voter from Pimpri Constituency having Electoral Roll No.154 at Serial No.737 filed present Election Petition for declaration that the election of applicant original respondent No.1 from Maharashtra Legislative Assembly, Pimpri (SC) Legislative Assembly constituency held on 15th October 2014 and the result of which was declared on 19th October 2014, as *null* and *void*.

4. The petitioner filed present Election Petition under Article 226 of the Constitution of India and under section 81 of the Representation of People Act, 1951 (hereinafter referred to as the "said Act") on several grounds. The petitioner contended that the applicant respondent No.1 made several false and misleading statements and in the process, provided false and incomplete information to the Election Commission and also resorted to suppress material facts from the Election Commission. He further pleaded in the Election Petition that applicant respondent No.1 furnished incorrect information in respect of Permanent Account Number (PAN). Applicant before the Election Commissioner stated that his PAN Number is AETPS 3182 N. He also stated that his wife does not have a PAN card. It is the case of the petitioner that the applicant respondent No.1 had contested and won the Municipal Corporation Elections of Pimpri Chinchwad Municipal Corporation in the year 2012. In that election, applicant had filed affidavit on or around 30th December 2011 furnishing various details. In the affidavit dated 30th December 2011 the applicant has stated that his PAN card number was AEAPC 3471 P and his wife has a PAN card vide number ADLPC 1078E.

5. It is the case of the petitioner that the applicant furnished the information regarding whether the candidate is/is not accused of any offence punishable with imprisonment for two years or more in a pending case. The applicant has mentioned "no" whereas, the applicant is undergoing trial for offence under section 354, 504, 506, 34 of Indian Penal code and the said offence is punishable for more than two years.

6. It is the case of the petitioner that the applicant original respondent No.1 has not mentioned correctly the details of his wife's property. He has only mentioned that his wife's property was totally worth Rs.75,00,000/-. The applicant has not disclosed his property at T Building, Annabhau Housing Society, Room No. 6, Milind Nagar, Pimpri. The said property stands in the name of applicant as per the copy of Electricity bill obtained from Internet. The said bill shows his name, meaning thereby that the applicant is having property which has been mentioned in the said Electricity Bill.

7. The applicant failed to disclose his pending Electricity bills before the Election Commission. Thus, the applicant knowingly and willingly suppressed, the factum of having property as mentioned in the said Electricity Bill, apart from making other false statement and giving false information in his affidavit before the Election Commission. The petitioner challenged the applicants election on these grounds amongst other as narrated in the Election Petition.

8. The applicant respondent No. 1 preferred Application No. 17 of 2015 for dismissing the Election Petition on several grounds i.e. same is not filed as Election Petition as required by the said Act. The Election Petition filed under Article 226 of the Constitution of India as Writ Petition which is not maintainable in law. The petitioner failed to disclose cause of action for challenging his election. Petitioner has not disclosed any ground under section 100 of the said Act under which the Election Petition can be filed. The petitioner has not filed the present petitioner as required by section 83 of the said Act. The petitioner failed to comply section 81(3) of the said Act. There is mis-joinder of parties. The petitioner failed to disclose the correct registered address in Election Petition as required under Order VI Rule 14-A (1) of the Code of Civil Procedure, 1908. The petition was filed beyond the period of limitation.

9. The learned counsel for the applicant submits that section 81(3) of the said Act mandates that "Every Election Petition shall be accompanied by as many as copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be true copy of the petition". He submits that it is mandatory on the part of the Election Petitioner to file along with petition and / or within the prescribed period of limitation of 45 days, true copies of petition duly attested by him under his own signature. He submits that in the instant case, petitioner has miserably failed to comply with the said mandatory provision of the said Act. He submits that following are glaring and incurable defects In the petition filed by petitioner and the copy served on the applicant :

"a) Photocopies of court fee stamps affixed with the original petition are not there in the copies, filed along with original petition and the copy served on the applicant.

b) In page No.3 of the original Election Petition, the addresses of respondent No. 2 and respondent No. 3 are handwritten. The handwritten corrections are not initialled by the petitioner and his advocate. However, in the copies filed along with original petition and copy served on the applicant, the said corrections are completely missing.

c) In page 17 of the original petition, in the seventh line, figures and words "3" are handwritten after the words "Dated this". The said correction is not initialled by the petitioner and his advocate. In the copies filed along with original petition and in the copy served on the applicant, the said correction is completely missing.

d) In the verification on page No. 17 of the original petition, which is totally handwritten, figures and words "1 to 18" are handwritten in the fourth line of the verification. These figures and words have been written subsequently and this is evident from the fact that in the copies filed along with original petition and in the copy served upon the applicant, the said correction is completely missing,

e) In the verification on page No. 17 of the original petition which is totally handwritten, figures and words, "11 to 16" are handwritten in the seventh line of the verification. These figures and words have been written subsequently and this is evident from the fact that in the copies filed along with the original petition and in the copy served upon the applicant, the said correction is completely missing.

f) In the Vakalatnama on page No.18 of original petition, address below the name of the petitioner is handwritten and the said correction is not initialled. However, in the copies filed along with the original petition and the copy served on the applicant, the said correction is completely missing.

g) In the original petition in the Vakalatnama on page 18, court fee stamp of Rs.5/- and Rs.10/- is affixed. However, in the copies filed along with the petition and in the copy served on the applicant, the said stamps are missing.

h) On page 19 of the original petition, two lines after the respondent No. 3 are handwritten and also figure and words "3rd" is handwritten after the words "Dated this" which is above petitioner's signature. The said correction are not initialled. The said corrections are completely missing from the copies filed along with original petition and the copy on the applicant.

i) The copies of the petition filed along with original petition and the copy served on the applicant, cannot be said to be true copies of the original petition.”

10. Counsel for the applicant submits that typed copies and English translations of the documents annexed to the petition are not verified by the petitioner. Therefore, petition is Incomplete and cannot be said to be construed as petition in the eyes of law and therefore, the same is liable to be dismissed.

11. The learned counsel for the applicant submits that petition is neither verified, nor affirmed as required by the Code of Civil Procedure, 1908 and more particularly Order VI Rule 15 of the said Code. He submits that every pleading is required to be signed by the party and his pleader and also verified by the party.

12. The learned counsel for the applicant submits that affidavit in support of petition on page 119 to 120 is an affidavit in support of Writ Petition and not the Election petition which is evident from the fact that in the first paragraph itself petitioner has stated *inter alia* “the petitioner has filed the present Writ Petition”. This shows that petitioner filed affidavit in support of Writ Petition and not the Election Petition, He submits that this itself is sufficient to dismiss the Election Petition.

13. The learned counsel for the applicant submits that Election Petition is also barred by limitation. He submits that section 117 of the said Act mandates at the time of presenting the Election Petition, petitioner shall deposit in the High Court in accordance with the Rules of the High Court, a sum of Rs.2,000/- as security for the cost of the petition. The said cost has to be paid within the prescribed period of limitation and in accordance with the rules of the High Court. Rule 365 of the Bombay High Court (Original Side) Rules in Chapter XXV stipulates that “deposit in cash will not be accepted by any of the Officers of the High Court after 1.00 p.m. on week days and after 12.00 noon on Saturdays”. He submits that the present Election Petition was filed by the petitioner on last date i.e. 3rd December 2014. He submits that the petitioner deposited the cost beyond the prescribed period of limitation as per section 117 of the said Act and hence, petition is liable to be dismissed summarily.

14. The learned counsel for the applicant submits that petition read as a whole, does not disclose any cause of action, He submits that it is well settled principle of law that right to vote, right to contest election and right to challenge election is not a fundamental right but a statutory right. He submits that the challenge to the Election of a returned candidate has to be within the four corners of the grounds provided in the statute governing such election. He submits that in the present Election Petition there is not even a whisper of any of the ingredients of Section 100 of the said Act. Merely quoting statutory provisions and decision of the Hon’ble Courts does not constitute a cause of action. Hence, petition is liable to be dismissed for nondisclosure of material facts.

15. The learned Counsel for the applicant in support of his contention relied on the following authorities:

a) The Apex Court in the matter of *N. P. Ponnuswami vs. Returning Officer, Namakkal Constituency, Namakkal, Salem Dist. and four others*, AIR 1952 SC 64. In this authority, the Apex Court held that if the Election Petition is filed, invoking the Jurisdiction of the High Court under Article 226 of the Constitution of India, is not maintainable. All doubts and disputes relating to an election can be raised only in an Election Petition presented to the High Court after the election is over in accordance with the provisions of Part VI of the said Act and in no other manner. Paragraph 12 and 28 reads thus :

“12, It is now well-recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes J, in *Wolverhampton New Water Works Co. v. Hawkesford* 6 C.B. (N.S.) 356, 336 in the following passage :

“There are three classes of cases in which a liability may be established founded upon statute. One is where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely but..provides no particular form of remedy; there, the party can only proceed by action at common law. But there is a third class *viz.*, where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it..... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.”

28. We are informed that besides the Madras High Court seven, other State High Courts have held that they have no jurisdiction under article 226 of the Constitution of the entertain petitions regarding improper rejection of nomination, papers. This view is in my opinion correct and must be affirmed. The appeal must therefore fail and is dismissed. In view of the nature and importance of the points raised in this appeal, there should be no order to costs.”

b) The Apex Court in the matter of *Satya Narain vs. Dhuja Ram and Others*, (1974) (4) SCC 237 held that the requirement under section 81(3) of the said Act, that spare copies of the Election Petition shall accompany the petition, is directory and not mandatory. It is substantial compliance with the said directory provision, if the spare copies of an Election Petition, instead of accompanying the petition, are filed before the petition is laid before the Judge for orders or even within the time that may be granted by the court.

c) The Apex Court in the matter of *Om Prakash Srivastava vs. Union of India and Another*; (2006) 6 SCC 207 held that “cause of action” it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the Suit.

The learned Counsel for the applicant submits that in the present proceeding in hand, though the petitioner made averments for setting aside the election of applicant, they failed and neglected to disclose the cause of action with necessary material. He relies on the paragraph 9, 10, 11, 12 and 13 of this authority which read thus :

“9. By “cause of action” it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit. (See *Bloom Dekor Ltd. v. Subhash Himatlal Desai and Ors.*: (1994)6SCC322).

10. In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908) “cause of action” means every fact, which it is necessary to establish to support a right to obtain a judgment. (See *Sadanandan Bhadrans v. Madhavan Sunil Kumar* : 1998 SCC (Cri) 147.

11. It is settled law that “cause of action” consists of bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise. (See *South East Asia Shipping Co, Ltd. v. Nav Bharat Enterprises Pvt. Ltd. and Ors.*: [1996]3 SCC 443.

12. The expression “cause of action” has acquired a judicially settled meaning. In the restricted sense “cause of action” means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above the expression means every fact,

which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary, to prove each fact, comprises in “cause of action”. [See Rajasthan High Court Advocates’ Assn. v. Union of India and Ors.(2001) (2) SCC 294].

13. The expression “cause of action” has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit. (See *Gurdit Singh v. Munsha Singh* : [1977] 1 SCC791.)

d) The Apex Court in the matter of *Ram Sukh vs. Dinesh Aggarwal*, (2009) 10 SCC 541 held that for maintainability of the Election Petition, strict compliance with statutory provisions is required. Success of winning candidate should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. The Apex Court also observed that the Election Petition must contain a concise statement of the material facts on which the petitioner relies and he should also set forth full particulars of all corrupt practice which the petitioner alleges. Paragraph 8, 10, 13 and 14 reads thus :

“8. Before examining the merits of the issues raised on behalf of the election petitioner with reference to the relevant statutory provisions, it would be appropriate to bear in mind the observations of this Court in *Jagan Nath v. Jaswant Singh and Ors.* AIR [1954] S.C.R. 892. Speaking for the Constitution Bench, Mehr Chand Mahajan, C.J., had said that the statutory requirement of election law must be strictly observed and that the election contest is not an action at law or a suit in equity, but is purely statutory proceeding unknown to the common law and that Court possesses no common law power. It is also well settled that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. Nevertheless, it is also to be borne in mind that one of the essentials of the election law is to safeguard the purity of the election process and, therefore, the courts must zealously ensure that people do not get elected by flagrant breaches of that law or by indulging in corrupt practices, as enumerated in the Act.

10. Section 83, the pivotal provision for the present case, requires that: (a) the election petition must contain a concise statement of “material facts” on which petitioner relies and (b) he should also set forth “full particulars” of any corrupt practices which the petitioner alleges. Proviso to Clause (c) of sub-section (1) of Section 83 also provides that where the petitioner alleges any corrupt practice, the election petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. It is plain that the requirement of disclosure of “material facts” and “full particulars” as stipulated in the Section is mandatory.

13. The phrase “material facts” has neither been defined in the Act nor in the Code and, therefore, it has been understood by the courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. In other words, “material facts” are facts upon which the plaintiff’s cause of action or defendant’s defence depends. [See: *Mahadeorao Sukaji Shivankar v. Ramaratan Bapu and Ors.*: (2004) 7 SCC 181]. Broadly speaking, all primary or basic facts which are necessary either to prove the cause of action by the plaintiff or defence by the defendant are “material facts”. Material facts are facts which, if established, would give the petitioner the relief asked for. But again, what could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down.

14. The requirement in an election petition as to the statement of material facts and the consequences of lack of such disclosure with reference to Sections 81, 83 and 86 of the Act came up for consideration before a three-Judge Bench of this Court in *Samant N. Balkrishna and Anr. vs. George Fernandez and Ors.* : (1969) 3 SCC 238 speaking for the three-Judge Bench, M. Hidayatullah, C.J., *inter-alia*, laid down that:

(i) Section 83 of the Act is mandatory and requires first a concise statement of material facts and then the fullest possible particulars ;

(ii) omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad;

(iii) the function of particulars is to present in full a picture of the cause of action and to make the opposite party understand the case he will have to meet;

(iv) material facts and particulars are distinct matters—material facts will mention statements of facts and particulars will set out the names of persons with date, time and place; and

(v) in stating the material facts it will not do merely to quote the words of the Section because then the efficacy of the material facts will be lost.”

16. The learned Counsel for the applicant submits that petitioner in the present Election Petition failed to disclose the material facts for allowing the Election Petition. He further submits that petitioner has not given and or disclosed full particulars of any corruption practice which the petitioner alleges in the petition. The Bombay High Court in the matter of *Ganesh Dadu Shendge vs. Dilip Dnyandeo Kamble*, 2016 SCC online Bom. 3577 after considering the Apex Court judgment held that if petitioner failed to disclose the material facts on record for allowing the Election Petition, same is required to be dismissed summarily. The Bombay High Court in the matter of *Rashmi Digambar Bagal vs. The Mantralaya Election Commission, Mantralaya, Mumbai 400 032* in Application No.5 of 2016 in Election Petition No.4 of 2014 along with connected Application by order dated 21.9.2016 held that if strict compliance of the said Act is not made at the time of filing the Election Petition, same is required to be dismissed summarily.

17. On the above mentioned submissions and the authorities, the learned Counsel for the applicant submits that this Hon'ble Court be pleased to allow the present application and dismiss the Election Petition summarily.

18. On the other hand the learned Counsel for the petitioner vehemently opposed the present application. Petitioner filed their Affidavit in reply dated 5.12.2015. The learned Counsel for the petitioner submits that they filed the present petition for declaration that the Election of the applicant respondent No. 1 to the Maharashtra Legislative Assembly from 206 Pimpri (SC) Legislative Assembly constituency held on 15.10.2014 and the result of which were declared on 19.10.2014, as null and void. He submits that it is not mandatory as per the said Act that it is to be specifically stated in the petition that same is filed under Section 81. He submits that though it is stated in the petition that same is filed under Article 226 of the Constitution of India, petitioner has made all averments as required by the said Act for setting aside the applicant .respondent No. 1's election.

19. The learned Counsel for the petitioner submits that petitioner in paragraph 6 of the Election Petition specifically stated that the applicant respondent No. 1 made incorrect statement before the election authority about his PAN number. He submits that the applicant respondent No. 1 failed to disclose the true facts about the PAN number of his wife either in the present application and or any other proceeding before the election authority. Hence, there is no substance in the present application and same is required to be dismissed.

20. The learned Counsel for the petitioner submits that petitioner in paragraph 5 of the Election Petition specifically stated that the applicant respondent No. 1 failed to disclose criminal complaints pending against him under Sections 354, 504, 506, 34 of the Indian Penal Code. On this ground also, applicant/respondent No. 1's election is required to be set aside.

21. The learned Counsel for the petitioner submits that the respondent No. 1 failed to disclose his wife's property in detail. For that specific ground is taken by the petitioner in Election Petition. He submits that these facts are required to be considered after leading evidence by both the parties at the time of final hearing. Hence, at present, petition cannot be dismissed on ground revised by the applicant in application.

22. The learned Counsel for the petitioner submits that petitioner specifically averred in the petition in paragraph 7 that the applicant respondent No. 1 made several incorrect statements before the authority Those incorrect statements can be proved at the time of final hearing after leading evidence of both the parties. Therefore, there is no question of entertaining application filed by the respondent No. 1 for summarily dismissal of the Election Petition.

23. The learned Counsel for the petitioner submits that defect in verification of affidavit cannot be a ground of dismissal of Election Petition summarily. In support of this contention, he relies on the judgment of the Apex Court in the matter of G.M.Siddeshwar *vs.* Prasanna Kumar, 2013(4) SCC 776.

24. On the basis of these submissions, the learned Counsel for the petitioner submissions that there is no substance in the present application and same is required to be dismissed with costs.

25. The learned A.G.P for respondent Nos. 2 and 3 submit that they also preferred the application No. 20 of 2015 for deleting the name of respondent No. 2 from the Election Petition, in view of the judgment of the Apex Court in the matters of Jyoti Basu and others *vs* Debi Ghosal and others, AIR 1982 SCC 983, B. Sundara Ram Reddy *vs.* Election Commission of India and others, 1991 Supp. (2) SCC 624 and Michael Fernandes *vs.* C. K. Jaffar Shariff and Others, (C.A.No.1318 of 2001) and Bombay High Court in Election Petition No. 6 of 2009 in which the Hon'ble Supreme Court has held that Election Commissioner of India cannot be impleaded as party respondent.

26. I have heard both the sides at length. Considering the submissions made by the learned Counsel for the parties, the following points arose for consideration of this court:

- a. Whether the Election Petition as it is filed by the petitioner is maintainable ? .. NO
- b. Whether the Election Petition is required to be dismissed summarily
for non compliance of section 81(3) of the said Act? ..YES
- c. Whether the Election Petition is required to be dismissed for mis joinder
of parties ? ..NO
- d. Whether the petition is barred by limitation ? ..NO

27. It is to be noted that bare reading of the Election Petition shows that same is filed by the petitioner under Article 226 of the Constitution of India. On 1st page of the petition, petitioner stated that "in the matter of Article 226 of the Constitution of India." Even paragraph 11 of the petition reads thus:

“11. The Petitioner is therefore approaching this Hon’ble Court under its extra ordinary jurisdiction enshrined under Article 226 of the Constitution of India in the interest of justice on the following amongst other grounds which are without prejudice to each other.”

28. No where in the petition, petitioner has stated that the same is presentation as per the provisions of section 81 of the said Act. Article 329 of the Constitution of India reads thus:

“329. Bar to interference by courts in electoral matters.- Notwithstanding anything in this Constitution

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, shall not be called in question in any court;

(b) No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.”

29. This shows that unless and until the Election Petition is filed as per the provisions of the said Act i.e. presented as per section 81, the same cannot be entertained by High court. Similar view is taken by Kerala High Court in the matter of Rajalakshmi T.D. *vs.* The District Election Officer and Ors., AIR 1999 Kerala 140. Even the Apex Court in the matter of N. P. Ponnuswami *vs.* Returning Officer, Namakkal Constituency, Namakkal, Salem Dist. And four others (Supra) held that High Court cannot entertain the Election Petition if it is filed under section 226 of the Constitution of India.

30. It is to be noted that bare reading of the petition shows that petitioner failed to disclose the fact that whether the petition is filed under the said Act or under Article 226 of the Constitution of India. It is admitted fact on the basis of record that petitioner filed the present Election Petition under Article 226 of the Constitution of India as stated on several places in the petition. Petitioner specifically stated that petitioner is challenging the returned candidates election under Article 226 of the Constitution of India.

31. Considering the submission made by the applicant, the averments made in application and the law declared by the Apex Court as well as Kerala High Court and after perusing the petition, it is crystal clear that the Election Petition as it is filed by the petitioner is not maintainable under the said Act. Hence, I am of the opinion that on this ground the petition is required to be dismissed summarily.

32. Second point raised by the applicant respondent No. 1 about non compliance of section 81(3) of the said Act. It is the contention of the applicant that the petitioner failed to provide true copies of Election Petition to the applicant. It is to be noted that the Gauhati Hon’ble Court in the matter of T. Phungzathang *vs* Hangkhanlian And Ors. AIR 2001, Gauhati 52 held that the Election Petition is liable to be dismissed due to non-compliance of the provisions of section 81(3) of the said Act. In the present proceeding, the applicant succeeded in proving that the petitioner failed to provide him the true copy of the Election Petition as required under section 81(3) of the said Act. On this ground also petition is liable to be dismissed.

33. The third point is about misjoinder of parties. It is to be noted that respondent No. 2 Returning Officer already preferred Application No.20 of 2015 for deleting their name from the present Election Petition. That application is required to be decided on its own merits. In any case, the petitioner can take appropriate steps for deleting the names of respondent if required. Authorities cited by the applicant on this point are not applicable for dismissing petition summarily. Considering these facts I do not find any reason to dismiss the Election Petition on this ground.

34. It is to be noted that in the present proceeding, the applicant respondent No. 1 raised objection that the petition filed by the petitioner is required, to be dismissed on the ground of limitation. The record and proceeding shows that the petitioner filed Election Petition on

3.12.2014 i.e. 45 days from the date of declaration to result. Whether the petitioner deposited sum of Rs.2,000/- as required under Rule 365 of the Bombay High Court (Original Side) Rules within time or not, is required to be considered after pleading evidence of both the parties. Bare statement made by the applicant respondent No. 1 in paragraph 9 of the application at present does not prove that the petition filed by the petitioner was barred by limitation. Hence, point: No. 4 is annexed in negative.

35. In view of the above mentioned facts and the findings on points as stated hereinabove, following order is passed:

(a) Application is partly allowed.

(b) Election Petition Nos. 27 of 2014 stands dismissed, as same is not filed according to Representation of the People Act, 1951 and non-compliance of section 81(3) of the said Act.

(c) No order as to costs.

K. K. TATED,
Judge.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL, CIVIL JURISDICTION**

APPLICATION No. 20 OF 2015

IN

ELECTION PETITION No. 27 OF 2014

Office Notes, Office Memoranda of

. . . *Court's or
Judge's orders*

Coram, Appearances, Court's orders or
directions and Registrar's orders.

Mr. Hardik Vyas for the petitioner

Mr. P. N. Patil for the applicant/respondent No. 1

Mr. U. S. Upadhyay, A.G.P. for the respondent Nos. 2 and 3.

CORAM : K. K. TATED, J.

DATED : DECEMBER 9, 2016.

P.C. :

1. Heard the learned counsel for the parties.
2. This application is preferred by returning officer to delete his name from the Election Petition No. 27 of 2014.
3. In view of the order passed by this court in Application No. 17 of 2015 by which Election Petition stands dismissed, nothing survives in the present application. Same stands disposed of as infructuous.

K. K. TATED,
JUDGE.

By Order,
A. N. DAS,
Secretary,
Election Commission of India.

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली 110 001

तारीख : 7 दिसम्बर 2017

16 अग्रहायण, 1939 (शक)

अधिसूचना

सं. 82/महा.-वि.स./27/2014.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2014 की निर्वाचन याचिका सं. 27 में मुम्बई उच्च न्यायालय के दिनांक 9 दिसम्बर 2016 के निर्णय/आदेश को एतद्वारा प्रकाशित करता है ।

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL, CIVIL JURISDICTION**

APPLICATION No. 17 OF 2015

IN

ELECTION PETITION No. 27 OF 2014

Mr. Subhash Jaising Borkar

. . . *Petitioner**Versus*

(1) Gautam Sukhdev Chabukswar

. . . *Applicant*

(Org. Respondent No. 1)

(2) Returning Officer,
Pimpri Constituency Assembly

(3) State of Maharashtra

. . . *Respondents*

Mr. Hardik Vyas for the petitioner

Mr. P. N. Patil for the applicant/respondent No. 1

Mr. U. S. Upadhyay, A.G.P. for the respondent Nos. 2 and 3

CORAM : K. K. TATED, J.

DATED DECEMBER 9, 2016

P.C. :

1. Heard the learned counsel for the parties.

2. By this application, applicant original respondent No. 1 returned candidate in Election of Legislative Assembly which was held on 15th October 2014 from Pimpri Constituency of Maharashtra State as candidate from Shiv Sena, seeks summarily dismissal of Election Petition filed by petitioner under Article 226 of the Constitution of India and Representation of People Act, 1951.

3. In the present proceeding, petitioner voter from Pimpri Constituency having Electoral Roll No.154 at Serial No.737 filed present Election Petition for declaration that the election of applicant original respondent No.1 from Maharashtra Legislative Assembly, Pimpri (SC) Legislative Assembly constituency held on 15th October 2014 and the result of which was declared on 19th October 2014, as *null and void*.

4. The petitioner filed present Election Petition under Article 226 of the Constitution of India and under section 81 of the Representation of People Act, 1951 (hereinafter referred to as the "said Act") on several grounds. The petitioner contended that the applicant respondent No.1 made several false and misleading statements and in the process, provided false and incomplete

information to the Election Commission and also resorted to suppress material facts from the Election Commission. He further pleaded in the Election Petition that applicant respondent No.1 furnished incorrect information in respect of Permanent Account Number (PAN). Applicant before the Election Commissioner stated that his PAN Number is AETPS 3182 N. He also stated that his wife does not have a PAN card. It is the case of the petitioner that the applicant respondent No.1 had contested and won the Municipal Corporation Elections of Pimpri Chinchwad Municipal Corporation in the year 2012. In that election, applicant had filed affidavit on or around 30th December 2011 furnishing various details. In the affidavit dated 30th December 2011 the applicant has stated that his PAN card number was AEAPC 3471 P and his wife has a PAN card vide number ADLPC 1078E.

5. It is the case of the petitioner that the applicant furnished the information regarding whether the candidate is/is not accused of any offence punishable with imprisonment for two years or more in a pending case. The applicant has mentioned "no" whereas, the applicant is undergoing trial for offence under section 354, 504, 506, 34 of Indian Penal code and the said offence is punishable for more than two years.

6. It is the case of the petitioner that the applicant original respondent No.1 has not mentioned correctly the details of his wife's property. He has only mentioned that his wife's property was totally worth Rs.75,00,000/-. The applicant has not disclosed his property at T Building, Annabhau Housing Society, Room No. 6, Milind Nagar, Pimpri. The said property stands in the name of applicant as per the copy of Electricity bill obtained from Internet. The said bill shows his name, meaning thereby that the applicant is having property which has been mentioned in the said Electricity Bill.

7. The applicant failed to disclose his pending Electricity bills before the Election Commission. Thus, the applicant knowingly and willingly suppressed, the factum of having property as mentioned in the said Electricity Bill, apart from making other false statement and giving false information in his affidavit before the Election Commission. The petitioner challenged the applicants election on these grounds amongst other as narrated in the Election Petition.

8. The applicant respondent No. 1 preferred Application No. 17 of 2015 for dismissing the Election Petition on several grounds i.e. same is not filed as Election Petition as required by the said Act. The Election Petition filed under Article 226 of the Constitution of India as Writ Petition which is not maintainable in law. The petitioner failed to disclose cause of action for challenging his election. Petitioner has not disclosed any ground under section 100 of the said Act under which the Election Petition can be filed. The petitioner has not filed the present petition as required by section 83 of the said Act. The petitioner failed to comply section 81(3) of the said Act. There is mis-joinder of parties. The petitioner failed to disclose the correct registered address in Election Petition as required under Order VI Rule 14-A (1) of the Code of Civil Procedure, 1908. The petition was filed beyond the period of limitation.

9. The learned counsel for the applicant submits that section 81(3) of the said Act mandates that "Every Election Petition shall be accompanied by as many as copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be true copy of the petition". He submits that it is mandatory on the part of the Election Petitioner to file along with petition and / or within the prescribed period of limitation of 45 days, true copies of petition duly attested by him under his own signature. He submits that in the instant case, petitioner has miserably failed to comply with the said mandatory provision of the said Act. He submits that following are glaring and incurable defects In the petition filed by petitioner and the copy served on the applicant :

"a) Photocopies of court fee stamps affixed with the original petition are not there in the copies, filed along with original petition and the copy served on the applicant.

b) In page No.3 of the original Election Petition, the addresses of respondent No. 2 and respondent No. 3 are handwritten. The handwritten corrections are not initialled by the petitioner and his advocate. However, in the copies filed along with original petition and copy served on the applicant, the said corrections are completely missing.

c) In page 17 of the original petition, in the seventh line, figures and words “3” are handwritten after the words “Dated this”. The said correction is not initialled by the petitioner and his advocate. In the copies filed along with original petition and in the copy served on the applicant, the said correction is completely missing.

d) In the verification on page No. 17 of the original petition, which is totally handwritten, figures and words “1 to 18” are handwritten in the fourth line of the verification. These figures and words have been written subsequently and this is evident from the fact that in the copies filed along with original petition and in the copy served upon the applicant, the said correction is completely missing,

e) In the verification on page No. 17 of the original petition which is totally handwritten, figures and words, “11 to 16” are handwritten in the seventh line of the verification. These figures and words have been written subsequently and this is evident from the fact that in the copies filed along with the original petition and in the copy served upon the applicant, the said correction is completely missing.

f) In the Vakalatnama on page No.18 of original petition, address below the name of the petitioner is handwritten and the said correction is not initialled. However, in the copies filed along with the original petition and the copy served on the applicant, the said correction is completely missing.

g) In the original petition in the Vakalatnama on page 18, court fee stamp of Rs.5/- and Rs.10/- is affixed. However, in the copies filed along with the petition and in the copy served on the applicant, the said stamps are missing.

h) On page 19 of the original petition, two lines after the respondent No. 3 are handwritten and also figure and words “3rd” is handwritten after the words “Dated this” which is above petitioner’s signature. The said correction are not initialled. The said corrections are completely missing from the copies filed along with original petition and the copy on the applicant.

i) The copies of the petition filed along with original petition and the copy served on the applicant, cannot be said to be true copies of the original petition.”

10. Counsel for the applicant submits that typed copies and English translations of the documents annexed to the petition are not verified by the petitioner. Therefore, petition is Incomplete and cannot be said to be construed as petition in the eyes of law and therefore, the same is liable to be dismissed.

11. The learned counsel for the applicant submits that petition is neither verified, nor affirmed as required by the Code of Civil Procedure, 1908 and more particularly Order VI Rule 15 of the said Code. He submits that every pleading is required to be signed by the party and his pleader and also verified by the party.

12. The learned counsel for the applicant submits that affidavit in support of petition on page 119 to 120 is an affidavit in support of Writ Petition and not the Election petition which is evident from the fact that in the first paragraph itself petitioner has stated *inter alia* “the petitioner has filed the present Writ Petition”. This shows that petitioner filed affidavit in support of Writ Petition and not the Election Petition, He submits that this itself is sufficient to dismiss the Election Petition.

13. The learned counsel for the applicant submits that Election Petition is also barred by limitation. He submits that section 117 of the said Act mandates at the time of presenting the Election Petition, petitioner shall deposit in the High Court in accordance with the Rules of the High Court, a sum of Rs.2,000/- as security for the cost of the petition. The said cost has to be paid within the prescribed period of limitation and in accordance with the rules of the High Court. Rule 365 of the Bombay High Court (Original Side) Rules in Chapter XXV stipulates that “deposit in cash will not be accepted by any of the Officers of the High Court after 1.00 p.m. on week days

and after 12.00 noon on Saturdays". He submits that the present Election Petition was filed by the petitioner on last date i.e. 3rd December 2014. He submits that the petitioner deposited the cost beyond the prescribed period of limitation as per section 117 of the said Act and hence, petition is liable to be dismissed summarily.

14. The learned counsel for the applicant submits that petition read as a whole, does not disclose any cause of action, He submits that it is well settled principle of law that right to vote, right to contest election and right to challenge election is not a fundamental right but a statutory right. He submits that the challenge to the Election of a returned candidate has to be within the four corners of the grounds provided in the statute governing such election. He submits that in the present Election Petition there is not even a whisper of any of the ingredients of Section 100 of the said Act. Merely quoting statutory provisions and decision of the Hon'ble Courts does not constitute a cause of action. Hence, petition is liable to be dismissed for nondisclosure of material facts.

15. The learned Counsel for the applicant in support of his contention relied on the following authorities:

a) The Apex Court in the matter of *N. P. Ponnuswami vs. Returning Officer, Namakkal Constituency, Namakkal, Salem Dist. and four others*, AIR 1952 SC 64. In this authority, the Apex Court held that if the Election Petition is filed, invoking the Jurisdiction of the High Court under Article 226 of the Constitution of India, is not maintainable. All doubts and disputes relating to an election can be raised only in an Election Petition presented to the High Court after the election is over in accordance with the provisions of Part VI of the said Act and in no other manner. Paragraph 12 and 28 reads thus :

"12, It is now well-recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes J, in *Wolverhampton New Water Works Co. v. Hawkesford* 6 C.B. (N.S.) 356, 336 in the following passage :

"There are three classes of cases in which a liability may be established founded upon statute. One is where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely but..provides no particular form of remedy; there, the party can only proceed by action at common law. But there is a third class *viz.*, where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it..... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

28. We are informed that besides the Madras High Court seven, other State High Courts have held that they have no jurisdiction under article 226 of the Constitution of the entertain petitions regarding improper rejection of nomination, papers. This view is in my opinion correct and must be affirmed. The appeal must therefore fail and is dismissed. In view of the nature and importance of the points raised in this appeal, there should be no order to costs."

b) The Apex Court in the matter of *Satya Narain vs. Dhuja Ram and Others*, (1974) (4) SCC 237 held that the requirement under section 81(3) of the said Act, that spare copies of the Election Petition shall accompany the petition, is directory and not mandatory. It Is substantial compliance with the said directory provision, if the spare copies of an Election Petition, instead of accompanying the petition, are filed before the petition is laid before the Judge for orders or even within the time that may be granted by the court.

c) The Apex Court in the matter of *Om Prakash Srivastava vs. Union of India and Another*; (2006) 6 SCC 207 held that “cause of action” it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the Suit.

The learned Counsel for the applicant submits that in the present proceeding in hand, though the petitioner made averments for setting aside the election of applicant, they failed and neglected to disclose the cause of action with necessary material. He relies on the paragraph 9, 10, 11, 12 and 13 of this authority which read thus :

“9. By “cause of action” it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit. (See *Bloom Dekor Ltd. v. Subhash Himatlal Desai and Ors.*: (1994)6SCC322).

10. In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908) “cause of action” means every fact, which it is necessary to establish to support a right to obtain a judgment. (See *Sadanandan Bhadran v. Madhavan Sunil Kumar* : 1998 SCC (Cri) 147.

11. It is settled law that “cause of action” consists of bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise. (See *South East Asia Shipping Co, Ltd. v. Nav Bharat Enterprises Pvt. Ltd. and Ors.*: [1996]3 SCC 443.

12. The expression “cause of action” has acquired a judicially settled meaning. In the restricted sense “cause of action” means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary, to prove each fact, comprises in “cause of action”, [See *Rajasthan High Court Advocates’ Assn. v. Union of India and Ors.*(2001) (2) SCC 294].

13. The expression “cause of action” has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit. (See *Gurdit Singh v. Munsha Singh* : [1977] 1 SCC791.)

d) The Apex Court in the matter of *Ram Sukh vs. Dinesh Aggarwal*, (2009) 10 SCC 541 held that for maintainability of the Election Petition, strict compliance with statutory provisions is required. Success of winning candidate should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. The Apex Court also observed that the Election Petition must contain a concise statement of the material facts on which the petitioner relies and he should also set forth full particulars of all corrupt practice which the petitioner alleges. Paragraph 8, 10, 13 and 14 reads thus :

“8. Before examining the merits of the issues raised on behalf of the election petitioner with reference to the relevant statutory provisions, it would be appropriate to bear in mind the observations of this Court in *Jagan Nath v. Jaswant Singh and Ors.* AIR [1954] S.C.R. 892. Speaking for the Constitution Bench, Mehr Chand Mahajan, C.J., had said that the statutory requirement of election law must be strictly observed and that the election contest is not an action at law or a suit in equity, but is purely statutory proceeding unknown to the common law and that Court possesses no common law power. It is also well settled that the success of a candidate who has

won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. Nevertheless, it is also to be borne in mind that one of the essentials of the election law is to safeguard the purity of the election process and, therefore, the courts must zealously ensure that people do not get elected by flagrant breaches of that law or by indulging in corrupt practices, as enumerated in the Act.

10. Section 83, the pivotal provision for the present case, requires that: (a) the election petition must contain a concise statement of “material facts” on which petitioner relies and (b) he should also set forth “full particulars” of any corrupt practices which the petitioner alleges. Proviso to Clause (c) of sub-section (1) of Section 83 also provides that where the petitioner alleges any corrupt practice, the election petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. It is plain that the requirement of disclosure of “material facts” and “full particulars” as stipulated in the Section is mandatory.

13. The phrase “material facts” has neither been defined in the Act nor in the Code and, therefore, it has been understood by the courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. In other words, “material facts” are facts upon which the plaintiff’s cause of action or defendant’s defence depends. [See: *Mahadeorao Sukaji Shivankar v. Ramaratan Bapu and Ors.*: (2004) 7 SCC 181]. Broadly speaking, all primary or basic facts which are necessary either to prove the cause of action by the plaintiff or defence by the defendant are “material facts”. Material facts are facts which, if established, would give the petitioner the relief asked for. But again, what could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down.

14. The requirement in an election petition as to the statement of material facts and the consequences of lack of such disclosure with reference to Sections 81, 83 and 86 of the Act came up for consideration before a three-Judge Bench of this Court in *Samant N. Balkrishna and Anr. vs. George Fernandez and Ors.* : (1969) 3 SCC 238 speaking for the three-Judge Bench, M. Hidayatullah, C.J., *inter-alia*, laid down that:

(i) Section 83 of the Act is mandatory and requires first a concise statement of material facts and then the fullest possible particulars ;

(ii) omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad;

(iii) the function of particulars is to present in full a picture of the cause of action and to make the opposite party understand the case he will have to meet;

(iv) material facts and particulars are distinct matters—material facts will mention statements of facts and particulars will set out the names of persons with date, time and place; and

(v) in stating the material facts it will not do merely to quote the words of the Section because then the efficacy of the material facts will be lost.”

16. The learned Counsel for the applicant submits that petitioner in the present Election Petition failed to disclose the material facts for allowing the Election Petition. He further submits that petitioner has not given and or disclosed full particulars of any corruption practice which the petitioner alleges in the petition. The Bombay High Court in the matter of *Ganesh Dadu Shendge vs. Dilip Dnyandeo Kamble*, 2016 SCC online Bom. 3577 after considering the Apex Court judgment held that if petitioner failed to disclose the material facts on record for allowing the Election Petition, same is required to be dismissed summarily. The Bombay High Court in the matter of *Rashmi Digambar Bagal vs. The Mantralaya Election Commission, Mantralaya, Mumbai 400 032* in Application No.5 of 2016 in Election Petition No.4 of 2014 along with connected Application by order dated 21.9.2016 held that if strict compliance of the said Act is not made at the time of filing the Election Petition, same is required to be dismissed summarily.

17. On the above mentioned submissions and the authorities, the learned Counsel for the applicant submits that this Hon'ble Court be pleased to allow the present application and dismiss the Election Petition summarily.

18. On the other hand the learned Counsel for the petitioner vehemently opposed the present application. Petitioner filed their Affidavit in reply dated 5.12.2015. The learned Counsel for the petitioner submits that they filed the present petition for declaration that the Election of the applicant respondent No. 1 to the Maharashtra Legislative Assembly from 206 Pimpri (SC) Legislative Assembly constituency held on 15.10.2014 and the result of which were declared on 19.10.2014, as null and void. He submits that it is not mandatory as per the said Act that it is to be specifically stated in the petition that same is filed under Section 81. He submits that though it is stated in the petition that same is filed under Article 226 of the Constitution of India, petitioner has made all averments as required by the said Act for setting aside the applicant respondent No. 1's election.

19. The learned Counsel for the petitioner submits that petitioner in paragraph 6 of the Election Petition specifically stated that the applicant respondent No. 1 made incorrect statement before the election authority about his PAN number. He submits that the applicant respondent No. 1 failed to disclose the true facts about the PAN number of his wife either in the present application and or any other proceeding before the election authority. Hence, there is no substance in the present application and same is required to be dismissed.

20. The learned Counsel for the petitioner submits that petitioner in paragraph 5 of the Election Petition specifically stated that the applicant respondent No. 1 failed to disclose criminal complaints pending against him under Sections 354, 504, 506, 34 of the Indian Penal Code. On this ground also, applicant/respondent No. 1's election is required to be set aside.

21. The learned Counsel for the petitioner submits that the respondent No. 1 failed to disclose his wife's property in detail. For that specific ground is taken by the petitioner in Election Petition. He submits that these facts are required to be considered after leading evidence by both the parties at the time of final hearing. Hence, at present, petition cannot be dismissed on ground revised by the applicant in application.

22. The learned Counsel for the petitioner submits that petitioner specifically averred in the petition in paragraph 7 that the applicant respondent No. 1 made several incorrect statements before the authority Those incorrect statements can be proved at the time of final hearing after leading evidence of both the parties. Therefore, there is no question of entertaining application filed by the respondent No. 1 for summarily dismissal of the Election Petition.

23. The learned Counsel for the petitioner submits that defect in verification of affidavit cannot be a ground of dismissal of Election Petition summarily. In support of this contention, he relies on the judgment of the Apex Court in the matter of G.M.Siddeshwar *vs.* Prasanna Kumar, 2013(4) SCC 776.

24. On the basis of these submissions, the learned Counsel for the petitioner submissions that there is no substance in the present application and same is required to be dismissed with costs.

25. The learned A.G.P for respondent Nos. 2 and 3 submit that they also preferred the application No. 20 of 2015 for deleting the name of respondent No. 2 from the Election Petition, in view of the judgment of the Apex Court in the matters of Jyoti Basu and others *vs* Debi Ghosal and others, AIR 1982 SCC 983, B. Sundara Ram Reddy *vs.* Election Commission of India and others, 1991 Supp. (2) SCC 624 and Michael Fernandes *vs.* C. K. Jaffar Shariff and Others, (C.A.No.1318 of 2001) and Bombay High Court in Election Petition No. 6 of 2009 in which the Hon'ble Supreme Court has held that Election Commissioner of India cannot be impleaded as party respondent.

26. I have heard both the sides at length. Considering the submissions made by the learned Counsel for the parties, the following points arose for consideration of this court:

- a. Whether the Election Petition as it is filed by the petitioner is maintainable ? .. NO
- b. Whether the Election Petition is required to be dismissed summarily for non compliance of section 81(3) of the said Act? ..YES
- c. Whether the Election Petition is required to be dismissed for mis joinder of parties ? ..NO
- d. Whether the petition is barred by limitation ? ..NO

27. It is to be noted that bare reading of the Election Petition shows that same is filed by the petitioner under Article 226 of the Constitution of India. On 1st page of the petition, petitioner stated that “in the matter of Article 226 of the Constitution of India.” Even paragraph 11 of the petition reads thus:

“11. The Petitioner is therefore approaching this Hon’ble Court under its extra ordinary jurisdiction enshrined under Article 226 of the Constitution of India in the interest of justice on the following amongst other grounds which are without prejudice to each other.”

28. No where in the petition, petitioner has stated that the same is presentation as per the provisions of section 81 of the said Act. Article 329 of the Constitution of India reads thus:

“329. Bar to interference by courts in electoral matters.- Notwithstanding anything in this Constitution

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, shall not be called in question in any court;

(b) No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.”

29. This shows that unless and until the Election Petition is filed as per the provisions of the said Act i.e. presented as per section 81, the same cannot be entertained by High court. Similar view is taken by Kerala High Court in the matter of Rajalakshmi T.D. *vs.* The District Election Officer and Ors., AIR 1999 Kerala 140. Even the Apex Court in the matter of N. P. Ponnuswami *vs.* Returning Officer, Namakkal Constituency, Namakkal, Salem Dist. And four others (Supra) held that High Court cannot entertain the Election Petition if it is filed under section 226 of the Constitution of India.

30. It is to be noted that bare reading of the petition shows that petitioner failed to disclose the fact that whether the petition is filed under the said Act or under Article 226 of the Constitution of India. It is admitted fact on the basis of record that petitioner filed the present Election Petition under Article 226 of the Constitution of India as stated on several places in the petition. Petitioner specifically stated that petitioner is challenging the returned candidates election under Article 226 of the Constitution of India.

31. Considering the submission made by the applicant, the averments made in application and the law declared by the Apex Court as well as Kerala High Court and after perusing the petition, it is crystal clear that the Election Petition as it is filed by the petitioner is not maintainable under the said Act. Hence, I am of the opinion that on this ground the petition is required to be dismissed summarily.

32. Second point raised by the applicant respondent No. 1 about non compliance of section 81(3) of the said Act. It is the contention of the applicant that the petitioner failed to provide true copies of Election Petition to the applicant. It is to be noted that the Gauhati Hon’ble Court in the matter of T. Phungzathang *vs* Hangkhanlian And Ors. AIR 2001, Gauhati 52 held that the Election Petition is liable to be dismissed due to non-compliance of the provisions of section 81(3) of the said Act. In the present proceeding, the applicant succeeded in proving that the petitioner failed

to provide him the true copy of the Election Petition as required under section 81(3) of the said Act. On this ground also petition is liable to be dismissed.

33. The third point is about misjoinder of parties. It is to be noted that respondent No. 2 Returning Officer already preferred Application No.20 of 2015 for deleting their name from the present Election Petition. That application is required to be decided on its own merits. In any case, the petitioner can take appropriate steps for deleting the names of respondent if required. Authorities cited by the applicant on this point are not applicable for dismissing petition summarily. Considering these facts I do not find any reason to dismiss the Election Petition on this ground.

34. It is to be noted that in the present proceeding, the applicant respondent No. 1 raised objection that the petition filed by the petitioner is required, to be dismissed on the ground of limitation. The record and proceeding shows that the petitioner filed Election Petition on 3.12.2014 i.e. 45 days from the date of declaration to result. Whether the petitioner deposited sum of Rs.2,000/- as required under Rule 365 of the Bombay High Court (Original Side) Rules within time or not, is required to be considered after pleading evidence of both the parties. Bare statement made by the applicant respondent No. 1 in paragraph 9 of the application at present does not prove that the petition filed by the petitioner was barred by limitation. Hence, point: No. 4 is annexed in negative.

35. In view of the above mentioned facts and the findings on points as stated hereinabove, following order is passed:

(a) Application is partly allowed.

(b) Election Petition Nos. 27 of 2014 stands dismissed, as same is not filed according to Representation of the People Act, 1951 and non-compliance of section 81(3) of the said Act.

(c) No order as to costs.

K. K. TATED,
Judge.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL, CIVIL JURISDICTION**

APPLICATION No. 20 OF 2015

IN

ELECTION PETITION No. 27 OF 2014

Office Notes, Office Memoranda of

. . . *Court's or
Judge's orders*

Coram, Appearances, Court's orders or
directions and Registrar's orders.

Mr. Hardik Vyas for the petitioner

Mr. P. N. Patil for the applicant/respondent No. 1

Mr. U. S. Upadhyay, A.G.P. for the respondent Nos. 2 and 3.

CORAM : K. K. TATED, J.

DATED : DECEMBER 9, 2016.

P.C. :

1. Heard the learned counsel for the parties.
2. This application is preferred by returning officer to delete his name from the Election Petition No. 27 of 2014.
3. In view of the order passed by this court in Application No. 17 of 2015 by which Election Petition stands dismissed, nothing survives in the present application. Same stands disposed of as infructuous.

K. K. TATED,
JUDGE.

By Order,
A. N. DAS,
Secretary,
Election Commission of India.

आदेश से,
ए. एन. दास,
सचिव,
भारत निर्वाचन आयोग ।

क्रमांक: ईपीटी २०१८/प्र. क्र. ०१/१८/३३,
सामान्य प्रशासन विभाग
 मादाम कामा मार्ग, हुतात्मा राजगुरू चौक,
 मंत्रालय (विस्तार), मुंबई ४०० ०३२
 दिनांक ३ जानेवारी २०१८.

प्रत माहिती व आवश्यक कार्यवाहीस्तव अग्रेषित :

१. जिल्हाधिकारी व जिल्हा निवडणूक अधिकारी, पुणे.
२. निवडणूक निर्णय अधिकारी, पिंपरी, पुणे.
३. उप जिल्हाधिकारी व उप निवडणूक अधिकारी, पुणे.
४. निवडनस्ती.

शिरीष मोहोड,
 अवर सचिव व उप मुख्य निवडणूक अधिकारी,
 महाराष्ट्र शासन.